(17,658.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 544.

R. RASMUSSEN, PLAINTIFF IN ERROR,

vs.

THE STATE OF IDAHO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IDAHO.

INDEX.

	Original.	Print.
Caption	a	1
Transcript from the district court	1	1
Information	1	1
Arraignment	2	2
Order taking demurrer under advisement	2	2
Order overruling demurrer	2	2
Order overruling motion to quash	3	2
Order beginning trial, &c.	3	2
Verdict	4	3
Judgment	4	3
Demurrer to information	5	4
Motion to quash information	6	5
Notice of appeal	7	5
Bill of exceptions	7	6
Motion to quash	8	6
Demurrer	8	6
Objection to evidence	10	7
Testimony of R. Rasmussen	11	8
Motion for nonsuit	15	11

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	Original.	Print
Defendant's requests	16	12
Instructions to the jury	16	12
Defendant's exceptions to instructions	18	13
Exhibit No. 1—Proclamation	19	14
Assignment of errors	20	15
Judge's certificate to bill of exceptions	21	15
Clerk's certificate	21	15
Affidavit of Arthur Brown	22	16
Order extending time to file transcript	23	16
Syllabus	24	17
Opinion	25	17
Order granting time to file brief	36	23
Order for continuance	36	23
Order taking cause under advisement	37	24
Judgment	37	24
Petition for writ of error	38	24
Proclamation	41	26
Assignment of errors	43	26
Order allowing writ of error	45	28
Citation and service (copy)	46	28
Bond	47	29
Order approving bond	49	31
Writ of error	51	31
Clerk's certificate	52	32

a In the Supreme Court of the State of Idaho, November Term, 1899.

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant. } No. 577.

Transcript on Appeal.

Appeal from the district court of the fifth judicial district of the State of Idaho in and for Oneida county.

Arthur Brown, S. C. Winters, and John J. Guheen, attorneys for appellant; S. H. Hays, attorney general for the State.

Filed Sept. 20, 1899.

SOL. HASBROUCK, *Clerk.*

1 *County Attorney's Information.*

In the District Court, Fifth Judicial District of Idaho, in and for Oneida County.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

In the district court of the fifth judicial district of Idaho, sitting in and for Oneida county, June term, 1899.

R. Rasmussen is accused by the county attorney of Oneida county, in the fifth judicial district of the State of Idaho, by this information of the crime of driving sheep into the State of Idaho from the county of Box Elder, State of Utah, in violation of the proclamation of the governor of the State of Idaho, committed as follows, to wit:

The said R. Rasmussen, on the 20th day of April, 1899, at the county of Oneida and State of Idaho, and prior to the filing of this information did drive and cause to be driven from the county of Box Elder, Utah, into the county of Oneida, State of Idaho, three bands of sheep, which sheep so driven had been held, ranged and herded in said county of Box Elder, Utah, between the 12th day of April, 1899, and the said 20th day of April, 1899, against and in violation of the proclamation of the governor of the State of Idaho, issued and published on the 12th day of April, 1899.

That the said R. Rasmussen waived examination upon said charge before a committing magistrate of Malad precinct, in said county of Oneida, and was by said magistrate held to answer said charge in this court.

D. C. McDOUGALL,
County Attorney.

Endorsed: In the district court, fifth judicial district of
2 Idaho, in and for Oneida county. State of Idaho, plaintiff, *vs.* R. Rasmussen, defendant. County attorney's information filed in open district court and made a record of this court this the 12th day of June, 1899. D. J. Reynolds, clerk, by W. B. Thews, deputy. D. C. McDougall, county attorney. Names of witnesses: Peter Johnson, Griffeth Davis, David S. Thomas, James Morris.

Court Record, June 12, 1899.

In the District Court, Fifth Judicial District of Idaho, in and for Oneida County.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

On this day the above-named defendant came into court to be arraigned upon the information heretofore filed against him, the said defendant, the clerk thereupon, under the direction of the court, read the information heretofore filed against him, the said defendant, under the name of R. Rasmussen, and asked him if that was his true name, to which he replied that it was, and upon being asked to plead, and being informed of his rights in the premises took the statutory time in which to plead to the information.

(June 13, Same Court and Cause.)

Now comes the defendant in the above-entitled action and interposes a demurrer to the information heretofore filed in said cause, after argument by counsel for and against the said demurrer, and the court not being fully advised of and concerning the said demurrer took the same under advisement.

(June 14, Same Court and Cause.)

The demurrer heretofore interposed by the defendant, and
3 the court having taken the same under consideration, and being fully advised of and concerning the same, overruled the said demurrer, to which ruling counsel for the defendant excepted, whereupon the defendant entered his plea of "not guilty."

(Same Court and Cause.)

The motion heretofore interposed to quash the information heretofore filed in this action, and the same having been duly considered, by the court, it is ordered that the said motion be and the same is hereby denied. To which ruling the defendant's counsel excepted, whereupon defendant entered his pl-a of not guilty.

(Same Court and Cause and Date.)

On this day came on regularly for trial the above-entitled cause, D. C. McDougall, John A. Bagley and Geo. E. Gray, Esqs., appear-

ing on part of the prosecution, and Messrs. Winters and Guheen and Arthur Brown appearing on part of the defendant, the clerk thereupon, under direction of the court, placed in the jury-box the names of the persons heretofore summonsed to serve as jurors and proceeded to draw therefrom a jury; and the following is the jury duly sworn to well and truly try the matter in issue, and a true verdict render according to the law and the evidence, viz: Charles Munn, John Larsen, Ben. D. Jones, Thomas Daniels, Sr., John Mandry, Morgan P. Jones, William McDermit, John L. Thomas, Richard Morse, Charles Walker, L. S. Barnard and D. P. Davis. Whereupon counsel for plaintiff stated the case to the jury on part of the prosecution, and R. Rasmussen, the defendant in the case, was called to the witness stand, by consent of counsel was duly sworn, examined and cross-examined on part of the prosecution,
4 and here the evidence closed, defendant having introduced no witnesses, the cause was thereupon submitted to the jury without argument, the court instructed the jury in the law as to its duty; whereupon the said jury retired to deliberate upon their verdict, with Hugh Jones duly sworn an officer to take charge of the said jury and keep them together in some private and convenient place and return them into court when they had agreed upon their verdict.

And now on this same day came the jury into court, all being called and found to be present, were asked by the court if they had agreed on their verdict, they, through their foreman, answered they had, and presented to the court their verdict which was filed by the clerk and recorded in the following language, to wit:

STATE OF IDAHO }
vs.
R. RASMUSSEN. }

We the jury, duly sworn to try the above-entitled action, find the defendant guilty.

CHARLES MUNN, *Foreman.*

(June 15, Same Court and Cause.)

The defendant with his attorney *with his attorneys* came into court, the defendant was duly informed by the court of the nature of the information found against him for the crime of driving sheep into the State of Idaho, from Box Elder county, in violation of the governor's proclamation, committed on the 20th day of April, 1899. Of the arraignment and plea of not guilty. The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him; to which he replied that he had none, and no sufficient cause being shown or appearing to the court, — thereupon rendered its judgment, that whereas the said R. Rasmussen, having been duly convicted of crime of violating
5 the governor's proclamation, it is therefore ordered, adjudged and decreed, that the said R. Rasmussen is guilty of the crime of violating the governor's proclamation, and that the

said R. Rasmussen be and he is hereby fined in the sum of three hundred dollars and costs of this action.

Demurrer.

In the District Court, Fifth Judicial District, in and for the County of Oneida, State of Idaho.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

Comes now the defendant in the above-entitled action and demurs to the information heretofore filed in said cause, and for grounds of demurrer says:

1st.

That said information does not state facts sufficient to constitute a public offense, or any offense known to the laws of the State of Idaho.

2d.

That said information is ambiguous, unintelligible and uncertain, in this: It is uncertain as to whether the proclamation of the governor of the State of Idaho was violated by holding sheep in Box Elder county, Utah, or by driving them into the State of Idaho. It is also ambiguous as to whether the defendant is charged with violating the proclamation of the governor of Idaho, or of violating some law of the State of Idaho. It is unintelligible and uncertain as to what proclamation of the governor of the State of Idaho defendant is accused of violating. It is also ambiguous and uncertain as to whether the defendant, or some one else, held, ranged or herded the said sheep in Box Elder county, Utah, between the 12th day of April, 1899, and the 15th day of April, 1899; it is also uncertain as to whether defendant received said sheep in charge before, or after, the issuance and publication of said proclamation; it is also uncertain as to whether defendant upon entering the county of Oneida with said sheep forthwith notified the deputy inspector of said county of Oneida of his entering said county.

Wherefore defendant asks to be dismissed and discharged.

WINTERS & GUHEEN AND
ARTHUR BROWN,
Attorneys for Defendant.

Filed 13th day of June, 1899.

Motion to Quash Information.

In the District Court, Fifth Judicial District, in and for Oneida County, Idaho.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

Comes now the defendant and moves the court to quash the information heretofore filed in said action, and to discharge the defendant for the following reasons:

1st. That said defendant never was examined upon the charge mentioned in said information before any officer authorized to hold examinations.

2d. That said defendant was never committed upon said charge by any magistrate in the State of Idaho.

WINTERS & GUHEEN AND
ARTHUR BROWN,
Attorneys for Defendant.

Filed June 13, 1899.

7 *Notice of Appeal.*

In the District Court, Fifth Judicial District of Idaho, in and for Oneida County.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

The above-named defendant hereby appeals and gives notice of appeal from the judgment and conviction rendered in said cause, on the 15th day of June, 1899, and from the whole of the same to the supreme court of the State of Idaho.

ARTHUR BROWN,
S. C. WINTERS,
Attorneys for Defendant.

June 15, 1899.

Service of a copy of the foregoing notice is hereby admitted.
June 15, 1899.

JOHN E. BAGLEY,
GEORGE E. GRAY,
D. C. McDOUGALL,
Attorneys for Plaintiff.

Filed June 15, 1899.

Bill of Exceptions.

In the District Court, Fifth Judicial District, in and for the County of Oneida, State of Idaho.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

In the above-entitled cause the said defendant was arraigned in the said court on the 13th day of June, 1899.

At the time of his arraignment, the prosecution appeared by D. C. McDougall, prosecuting attorney, and by John Bagley, associate counsel, and the said defendant by S. C. Winters and
8 Arthur Brown, his counsel. The defendant, by his counsel, made a motion to quash the indictment, which motion was in writing, and is hereto annexed; at the same time the defendant, by his counsel, filed a demurrer hereto annexed.

Motion to Quash Information.

(Title of the Court and Cause.)

Comes now the defendant, and moved the court to quash the information heretofore filed in said action, and to discharge the defendant for the following reasons:

1st. That said defendant never was examined upon the charge mentioned in said information, before any officer authorized to hold examinations.

2d. That said defendant was never committed upon said charge by any magistrate in the State of Idaho.

WINTERS & GUHEEN AND
ARTHUR BROWN,
Attorneys for Defendant.

Demurrer.

(Title of the Court and Cause.)

Comes now the defendant in the above-entitled action, and demurs to the information heretofore filed in said cause, and for grounds of demurrer says:

1st. That said information does not state facts sufficient to constitute a public offense, or any offense known to the laws of the State of Idaho.

2d. That said information is ambiguous, unintelligible and uncertain in this: It is uncertain as to whether the proclamation of the governor of the State of Idaho was violated by holding sheep in Box Elder county, Utah, or by driving them into the State of
9 Idaho. It is also ambiguous as to whether the defendant is charged with violating a proclamation of the governor of

Idaho, or of violating some law of the State of Idaho. It is unintelligible and uncertain as to what proclamation of the governor of the State of Idaho defendant is accused of violating. It is also ambiguous and uncertain as to whether the defendant, or some one else, held, ranged, or herded the said sheep in Box Elder county, Utah, between the 12th day of April, 1899, and the 15th day of April, 1899. It is also uncertain as to whether the defendant received the said sheep in charge before, or after, the issuance and publication of said proclamation; it is also uncertain as to whether defendant, upon entering the county of Oneida with said sheep, forthwith notified the deputy inspector of said county of Oneida of his entering said county.

Wherefore defendant asks to be dismissed and discharged.

WINTERS & GUHEEN AND
ARTHUR BROWN,
Attorneys for Defendant.

On the said 13th day of June, 1899, said motion to quash the indictment and demurrer came on for argument, said counsel appearing for the defendant, and arguing the same, and the prosecuting attorney and associate counsel appearing for the State, and arguing the same, which motion and demurrer were taken into consideration by the court, and after due consideration thereof the court denied the said motion to quash and overruled the said demurrer, and thereupon the said defendant pleaded to the information, not guilty.

On the said 14th day of June said cause came on for trial, at which the following proceedings were had:

10 1st.

Plaintiff offers in evidence document marked "Plaintiff's Exhibit I."

Mr. BROWN: We object to it, if your honor please, and object to the introduction of any of this testimony, for the reason:

1st.

That there is no information stating any crime.

2d.

There is no statement or allegation of this proclamation in the information; it does not recite it or state it in substance; the facts of this proclamation are not stated in the information.

3d.

This document is not authenticated in a manner to entitle it to be received in evidence. This document purports to be a proclamation of the governor of the State of Idaho. It is an act of the executive that must be proven, the statutes say, by the records, but at all events there must be a certified copy of it. The records, of course, are kept at the State department at Boise, but there must be

a true copy of the original, aad there is no such certificate here, if I have read it right. It could not be the original, the original must be preserved and filed at Boise; this has never been filed anywhere. It does not purport to be *a* certified, and for that reason we object to it.

COURT: Objections overruled.

Exceptions to the ruling of the court.

Mr. BROWN: The defendant is here, and at the suggestion of the prosecution I offer him as a witness, and waive any objection on the ground that he is the defendant, and permit him to be sworn as a witness, although the evidence might criminate himself.

11 Mr. BAGLEY: This is done to expedite matters, in order to prevent sending into the country for another witness.

R. RASMUSSEN, being first duly sworn, testified as follows:

Q. What is your name?
A. R. Rasmussen.
Q. Residence?
A. My residence—Spring City, Utah.
Q. What is your occupation?
A. Handling sheep.
Q. You are the defendant in this case?
A. Yes, sir.
Q. I will ask you if you brought or caused to be brought, any sheep into the State of Idaho, in the county of Oneida, on or about the 20th day of April, 1899?
A. No, sir.
Q. You say you did not?
A. I did not.
Q. Do you own any sheep, Mr. Rasmussen?
A. No, sir.
Mr. BROWN: Let me ask him a question.
Q. You were herding for Knollins and their sheep were brought in about that time?
A. Not about that time.
Q. When was it?
A. About the 12th or 13th.

By Mr. BAGLEY:

Q. Did you have any sheep in charge between the 12th and 20th of April, 1899?
A. Yes, sir.
Q. In what capacity did you have these sheep in charge, I mean as herder or owner?
A. As foreman.
Q. As such foreman you were directing the management of these sheep and saw to the herding of them?
A. Yes, sir; mostly.
Q. Where were these sheep ranged, held or herded from the 12th day of April up to the 20th day of April, 1899?

A. You might say they were not ranged any place; we were driving them during that time.
Q. Where were they during the 12th day of April, 1899?
A. Box Elder county.
Q. State of Utah?
A. Yes, sir.
Q. Where did you move them from there up to the 20th day of April?
A. From there I moved them into Idaho.
Q. Into what county?
A. I think they came into Cassia county, and from there into Oneida county.
12 Q. Did you bring them into Oneida county?
A. Yes, sir.
Q. About what date did they enter Oneida county?
A. About the 16th or 17th.
Q. Of April, 1899?
A. Part of them.
Q. About how many sheep were there that were brought from Box Elder county, Utah, into Oneida county, Idaho?
A. Six herds, I think.
Q. How many head did they aggregate?
A. About 15,000.
Q. As I understand you had these sheep in charge as foreman?
A. Yes, sir.
Q. And under your directions and instructions they were brought from Box Elder county, Utah, into Oneida county, Idaho?
A. Yes, sir.
Q. These sheep were held and herded or driven to Box Elder county, Utah, after the 12th day of April, 1899, and before the 20th day of April, 1899?
A. Yes, sir; they were driven through Box Elder county.
Q. And they were brought into Oneida county, Idaho, after they had been driven through Box Elder county, Utah?
A. Yes, sir.

Cross-examination by Mr. BROWN:

Q. You were foreman, for whom were you working?
A. A. J. Knollin & Co.
Q. Were these sheep which you had charge of wintered?

Mr. BAGLEY: We think this is immaterial; object to it as being immaterial and irrelevant.

Mr. BROWN: As I understand the facts to be a part of these sheep were wintered near Gunnison, in southern Utah, and not near the counties mentioned, and herded and held there, and this spring were driven by what is known as the western route, west of Salt Lake, through Box Elder into Cassia, and from Cassia into Oneida county. I offer to show that.

The COURT: You may show it.

Q. They were wintered between here and Idaho—Blackrock, Utah, I mean?

13 A. Blackrock, Utah; yes, sir.

Q. Did I understand you to say part of them were wintered in Idaho?

A. No, sir.

Q. Not any part, but in the vicinity of Blackrock, Utah?

A. Yes, sir.

Q. What county?

A. Millard county.

Q. What time in the spring did you move them from there?

A. We started from there the 20th of January.

Q. What route did you take?

A. I came around through Snake valley by Deep creek.

Q. West of Salt Lake?

A. West of Salt Lake.

Q. Up through the Deep Creek country?

A. Yes, sir.

Q. Whereabouts did you get into the Box Elder country, if you know?

A. Right southeast of Tacoma.

Q. How long were you in driving through Box Elder county?

A. About 25 days.

Q. Did you drive directly through it?

A. As near as I could. We traveled right along.

Q. And you arrived in Idaho, in the county of Cassia?

A. Yes, sir.

Q. And from the county of Cassia drove into the county of Oneida?

A. Yes, sir.

Q. What time did you arrive at the county of Cassia?

A. The first herds arrived there about the 12th of April, on the 12th of April.

Q. On the 12th of April?

A. On the 12th of April, I think.

Q. When did you arrive in the county of Oneida?

A. Some time about the 16th.

Q. Did your sheep have the scab*bies* or scab?

(Objected to as incompetent and immaterial. Objections sustained.)

Mr. BROWN: I offer to show that none of the sheep that he drove into Cassia county had the scab or scab*bies*, that not one of the sheep that he drove into Oneida county had the scab or scab*bies*, or any other disease.

The COURT: I don't think it would make any difference; the objection is sustained.

Defendant excepts to the ruling of the court.

14 Mr. BROWN: I will add that they did not have any indications or hint of having any disease, whatever, at the time they came into Cassia county, or Oneida county.

I suppose this is subject to the same ruling?
The COURT: Yes.
(Exception.)

Q. Did you know, when you entered the county of Cassia, of the existence of this proclamation that has been read here?

(Objected to as incompetent, immaterial, and irrelevant. Objection sustained. Exception.)

Q. Did you know of this proclamation that has been offered in evidence at the time you drove into Oneida county?

(Objected to as incompetent, irrelevant, and immaterial. Same ruling. Exception.)

Q. I asked if you knew it. I will make it stronger, if you had ever heard or been informed anything about it?

(Same objection. Same ruling. Exception.)

Redirect.

By Mr. BAGLEY:

Q. Mr. Rasmussen, you are familiär with the range—that is, the sheep range, through Box Elder county, Utah, into Oneida county, Idaho, are you not?
A. Yes, sir; part of it.
Q. In driving your sheep through Box Elder county and into Oneida county, Idaho, did you drive them over the usual ordinary sheep range and trail?
A. Why, part of the way.
Q. What part of it?
A. Well, different parts: from Oneida, part way we came over the trail; or from Tacoma, rather.
Q. Then you drove your sheep over the same trail and range that other sheep passing from that country into this country, would range?
A. Yes, sir; part of the time.
Q. While they were in Box Elder county they were on that range and trail that had been traveled by other sheep, and was ordinarily traveled by sheep, coming from the winter range into Idaho?
A. Yes, sir; part of the time.

State rests.

The defense now moves for a nonsuit on the following grounds:

1st.

No offense is alleged in the information.

2d.

No offense has been proven by the evidence.

3d.

The governor was not authorized to make any proclamation.

4th.

The event in which the statutes authorizing the governor to make a proclamation, to wit, that he had good reasons to believe that scab or infectious disease had become epidemic in the localities mentioned, is not certified to by him, or proven by any other witness or witnesses.

5th.

There is no proper proof of any proclamation.

6th.

There is no publication of any proclamation shown whatever.

7th.

No proof that any of the sheep were diseased, or that they had any need of being quarantined.

8th.

This is not the proper county in which to bring suit, but the county of Cassia is.

Motion overruled by the court. Defendant excepts.

Defendant rests.

16 Mr. BROWN: I now move for a verdict of the jury and that the court direct the jury to return a verdict, for all the reasons which I named in the motion for nonsuit, just above submitted, a verdict of the jury of acquittal, not guilty, for all the reasons I suggest, I need not repeat.

(Motion denied. Defendant excepts.)

The following instructions were requested by the defendant and refused by the court:

1st. Upon the undisputed facts of this case, the jury should return a verdict of not guilty.

(Refused.)

To which refusal counsel for defendant excepted.

2d. If the jury find that the sheep involved in this case first came into Cassia county from Box Elder, then that is the proper county in which to bring prosecution, and the jury should acquit.

(Refused.)

To which refusal counsel for defendant excepted.

Instructions to the Jury.

The court will instruct the jury that the law in regards to this case is as follows:

Whenever the governor of the State of Idaho has reason to believe that scab or any infectious disease of sheep has become

epidemic in certain localities in any other State or Territory, or that conditions exist that render sheep likely to convey this disease, he must thereupon, by proclamation, designate such localities and prohibit the importation from there of any sheep into the State, except under such restrictions as, after consultation with the State sheep inspector, he may deem proper. Any person or corporation, who, after publication of such proclamation, receives in charge any such sheep, from any of the prohibited districts, and
17 transports, conveys or drives the same to and within the limits of any of the counties of this State, is punishable by a fine not exceeding $1,000 nor less than $200, and is liable for all damages that may be sustained, by any person by reason of the importation or the transportation of such prohibited sheep. Upon the issuing of such proclamation the owners, or person in charge of any sheep, being shipped into Idaho against which quarantine has been declared, must forthwith notify the deputy inspector of the county into which said sheep may come, of such arrival, and the owner, or person in charge, must not allow any sheep that is quarantined to pass over or upon any public highway, or upon ranges occupied by any other sheep, or within five miles of any corral in which sheep are usually corraled, until such sheep have first been inspected, and any person failing to comply with the provisions of this section *are* punishable, as provided by section 1 of the act, and is liable for all damages sustained by any person by reason of the failure to comply with the provisions of this section.

The court further instructs the jury that if the defendant did, between the 12th day of April and the 20th day of April, 1899, drive, or cause to be driven from the county of Box Elder, Utah, into the county of Oneida, State of Idaho, bands of sheep, being driven from the prohibited sections, embodied in the governor's proclamation, then the defendant is guilty as charged in the information.

The court further instructs the jury that the defendant is presumed to be innocent until proven guilty by the prosecution beyond a reasonable doubt.

You are the sole judges of the evidence that has been introduced in this case, and will be governed by it in making up your verdict.

18 The court further instructs you that under the law the governor had a right to issue the proclamation as stated in the information, and if the defendant violated the provisions of that proclamation he also violated the provisions of the law that I have read to you in this charge.

Ten of you may agree on a verdict.

Defendanant's Exceptions to the Instructions of the Court.

The defendant excepts to the refusal to charge as requested by the defendant in each of his requests.

The defendant excepts to the charge of the court, reading the so-called statute of Idaho, as the law in the case. (Paragraph 1.)

The defendant excepts to the charge that if the defendant drove

into Oneida county bands of sheep, being driven from the county, embodied in the proclamation, that they should find the defendant guilty. (Paragraph 2.)

And the defendant excepts to the charge that the governor had the right to issue the proclamation, which was read in evidence. (Paragraph 3.)

The defendant excepts to the charge that if the defendant violated the proclamation then it was the same as violating the law and they should find him guilty, or in substance about that. (Paragraph 4.)

I hereby certify that the within is a full, true, and correct copy of all the evidence in the above-entitled case.

N. GALLAGHER,
Court Reporter.

19 EXHIBIT TO BILL OF EXCEPTIONS NO. 1.

Proclamation Scheduling Certain Localities on Account of Scab or Scabbies.

STATE OF IDAHO, EXECUTIVE OFFICE.

Whereas, I have received statements from reliable wool-growers and stock-raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease known as scab or scabbies is epidemic among sheep in certain localities or districts, viz: in the county of Cache, State of Utah; the county of Box Elder, State of Utah, and the county of Elko, in the State of Nevada, and, whereas, it is known that sheep from said districts are annually moved, driven or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster. Now, therefore, I, Frank Steunenberg, governor of the State of Idaho, by virtue of authority in me vested, and after due consultation with the State sheep inspector, do hereby prohibit the importation, driving or moving into the State of Idaho of all sheep now being held, herded or ranged, within said infected district, viz: the county of Cache, in the State of Utah; the county of Box Elder, in the State of Utah, and the county of Elko, in the State of Nevada, or which may hereafter be held, herded or ranged within said infected districts, for a period of 60 days from and after the date of this proclamation; after the termination of said 60 days sheep can be moved into this State only upon compliance with all laws of the State of Idaho regarding the inspection and dipping of sheep.

In witness whereof, I have hereunto set my hand and
20 caused to be affixed the great seal of the State. Done at Boise, the capital, this 12th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.] FRANK STEUNENBERG.

By the governor:
M. PATRIE,
Secretary of State.

Assignments of Errors.

The court erred:

1st. In denying the motion to quash.

2d. In overruling the demurrer.

3d. In admitting in evidence the document called "Proclamation of the governor," and overruling the objections of counsel for the defendant thereto.

4th. In sustaining the objection of counsel for the prosecution to question to defendant: "Did your sheep have scab or scabbies?"

5th. In sustaining objections to question to defendant: "Did they (the sheep) have any indication of any disease?"

6th. In sustaining objections of question to defendant: "Did you know when you entered into the county of Cassia with these sheep of the existence of the proclamation which was now read here?"

7th. In sustaining objection to question to defendant: "Did you know of this proclamation that has been offered in evidence at the time you drove into Oneida county?"

8th. In sustaining question to defendant: "Had you ever heard or been informed anything about it (the proclamation)?"

9th. In overruling defendant's motion for nonsuit.

21 10th. In overruling a direction to the jury to find for defendant, upon the reasons named in the motion for nonsuit.

11th. In refusing to charge as — request No. 1.

12th. In refusing to charge as in request No. 2.

13th. In charging the jury in paragraph No. 1, viz: reading the so-called statutes of Idaho as the law in the case.

14th. In charging the jury that if defendant drove into Oneida county bands of sheep, being driven from the prohibited sections embodied in the governor's proclamation, then the defendant is guilty. (Paragraph 2.)

15th. In charging that the governor had the right to issue the proclamation read in evidence. (Paragraph 3.)

16th. In charging that if the defendant violated the proclamation he also violated the provisions of the law. (Paragraph 4.)

ARTHUR BROWN,
S. C. WINTERS,
Attorneys for Defendant.

The foregoing bill of exceptions having been submitted to counsel for the prosecution, and admitted to be correct, it is settled by me, the judge of said court, this 15th day of June, 1899, at the request of counsel for the defendant. The foregoing bill contains all the evidence in said cause.

JOSEPH C. RICH, *Judge.*

STATE OF IDAHO, } ss:
County of Oneida, }

I, D. J. Reynolds, clerk of the district court in the fifth judicial district of the State of Idaho, in and for Oneida county, do hereby

certify that the foregoing transcript contains a full, true and
22 correct copy of the record, notice of appeal and all bills of exception in said action.

Witness my hand and the seal of said court this 9th day of September, 1899.

D. J. REYNOLDS, *Clerk.*

Supreme Court of the State of Idaho.

STATE OF IDAHO, Plaintiff and Respondent,
vs.
R. RASMUSSEN, Defendant and Appellant.

STATE OF UTAH,
County of Salt Lake, } ss:

Arthur Brown, being first duly sworn, says: I was the attorney for the above-named defendant upon the trial in the court below, and I prepared a bill of exceptions and took an appeal therein on or about the 14th day of June, 1899. At that time I gave the clerk directions to immediately prepare a transcript of the entire record and transmit to the clerk of this court, and make arrangements with him to pay him for it when he would know what the amount was. The clerk promised to do it at once. Since that time from time to time I have written asking its performance, and he now tells me that it was his deputy that was there and he has neglected to prepare the transcript on appeal, but he has them now ready. Under the circumstances I ask for an order extending the time within which to file said transcript.

ARTHUR BROWN.

Subscribed and sworn to before me this 5th day of September, 1899.

FRANK C. LEA,
Notary Public.

23 On reading the affidavit of Arthur Brown, counsel for appellant in the above-entitled cause, it is hereby ordered that the time for serving and filing the transcript on appeal herein is hereby extended to and including the 14th day of September, 1899.

Dated September 5, 1899.

JO. WALDO HUSTON,
Chief Justice of Supreme Court.

24 In the Supreme Court of the State of Idaho, January Term, 1900.

Filed January 23d, 1900. Sol. Hasbrouck, Clerk.

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant.

Syllabus.

An act of the Idaho legislature, establishing quarantine against diseased sheep, etc., passed on March 13, 1899, held not to be in contravention of section 8, article 1, nor section 2, article 4, of the Constitution of the United States.

Appeal from district court of Oneida county, Hon. Joseph C. Rich, district judge. Affirmed.

Arthur Brown, S. C. Winters, & John J. Guheen for appellant; S. H. Hays, attorney general, for State.

25 HUSTON, *C. J.*:

The appellant was convicted of a violation of the provisions of an act of the legislature of Idaho and the proclamation of the governor issued under and in obedience to the command of said statutes; from which judgment this appeal is taken. The said act is as follows:

"SECTION 1. Whenever the governor of the State of Idaho has reason to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other State or Territory, or that conditions exist that render sheep likely to convey disease, he must thereupon, by proclamation, designate such localities and prohibit the importation from them of any sheep into the State except under such restrictions as, after consultation with the State sheep inspector, he may deem proper.

Any person or corporation who, after publication of such proclamation, receives in charge any such sheep from any of the probibited districts and transports, conveys or drives the same to and within the limits of any of the counties of this State is punishable by fine not exceeding $1,000, nor less than $200, and is liable for all damages that may be sustained by any person by reason of the importation or transportation of such prohibited sheep.

SEC. 2. Upon issuing such proclamation, the owners or persons in charge of any sheep being shipped into Idaho, against which quarantine has been declared, must forthwith notify the deputy inspector of the county into which such sheep first come, of such arrival, and such owner or persons in charge must not allow any sheep so quarantined to pass over or upon any public highway, or upon the ranges occupied by other sheep, or within five miles
26 of any corral in which sheep are usually corralled until such sheep have first been inspected, and any person failing to

comply with the provisions of this section is punishable as provided in section one of this act and is liable for all damages sustained by any person by reason of the failure to comply with the provisions of this section."

On the 12th day of April, 1899, the governor of Idaho, in compliance with the provisions of said act, issued the following proclamation:

STATE OF IDAHO, EXECUTIVE OFFICE.

Whereas I have received statements from reliable wool-growers and stock-raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease known as scab or scabbies is epidemic among sheep in certain localities or districts, viz., in the county of Cache, State of Utah; the county of Box Elder, State of Utah, and the county of Elko, in the State of Nevada; and whereas it is known that sheep from said districts are annually moved, driven, or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster:

Now, therefore, I, Frank Steu-enberg, governor of the State of Idaho, by virtue of authority in me vested and after due consultation with the State sheep inspector, do hereby prohibit the importation, driving, or moving into the State of Idaho of all sheep now being held, herded, or ranged within said infected district, viz, the county of Cache, in the State of Utah; the county of Box Elder, in the State of Utah, and the county of Elko, in the
27 State of Nevada, or which may hereafter be held, herded, or ranged within said infected districts, for a period of 60 days from and after the date of this proclamation. After the termination of said 60 days sheep can be moved into this State only upon compliance with all laws of the State of Idaho regarding the inspection and dipping of sheep.

In witness whereof I have hereunto set my hand and caused to be affixed the great seal of the State.

Done at Boise, the capital, this 12th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.] FRANK STEUNENBERG.

By the governor:
M. PATRIE,
Secretary of State.

While there are some sixteen assignments of error in this case, it is conceded by counsel for appellant that the important question involved is the constitutionality of the act of the legislature of Idaho under which the conviction was had.

It is claimed that this case comes within the reasoning of this court in the case of The State *v.* Duckworth, 51 Pac., 456. In that case the defendant was convicted of a violation of an act of the legislature of Idaho, passed in 1895 and amended in 1897; section 6 of which act provides as follows:

"SECTION 6. Any person, persons, company, corporation or association intending to bring, or cause to be brought from any other State or Territory into any of the counties of the State of Idaho, any sheep, he or they must first notify the deputy sheep inspector of the district or county nearest to the point of entrance into this State that at a fixed date he will be within twenty miles from the State line at a designated point, with said sheep for inspection;
28 and it shall be the duty of the deputy sheep inspector to examine such sheep within three days, and if pronounced sound, to immediately dip such sheep once, and then upon being tendered his compensation as hereinafter provided, issue a permit allowing such sheep to enter this State subject to such regulations as are enforced on resident sheep. But if such sheep are found scabby or infected with any contagious or infectious disease, then the deputy sheep inspector must dip said sheep twice with an interval of from eight to fifteen days between dipping and then issue a permit for said sheep to enter said State under the same regulations as heretofore provided; provided, however, that all sheep must enter said State within three days from final dipping, otherwise permit so issued shall be null and void. And any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction, they shall be punished by a fine of not less than one hundred ($100.00) dollars, nor more than three hundred ($300) dollars, or by imprisonment in the county jail not less than two months nor more than six months or by both such fines and imprisonment; provided, that any person, persons, company, corporation or association bringing or causing to be brought any sheep into any counties of this State in violation of the provisions of this act, shall be fined in addition to the penalty imposed in this section, five cents per head, for every sheep so brought into this State, which shall be a lien on said sheep; and it shall be the duty of the deputy sheep inspector to seize and hold such sheep by such means as he deems best, for a period of ten days, and if said sum is not paid within that period, to advertise and sell said sheep, or as many of the same as may be necessary to satisfy and pay such fine and costs."

And section 14 of the law of 1895 provides as follows:
29 "SEC. 14. It shall be unlawful for any person, persons, company, corporation or association, owning, controlling or managing any ferry-boat, toll bridge, car, steamboat or other things used for transportation, to allow any sheep to be carried thereon, unless the party in charge of said sheep shall first produce a certificate from a deputy sheep inspector appointed under this act, that said sheep are free from scab, scab*bies* or other infectious or contagious disease. Any violation of this section shall be deemed a misdemeanor and punishable by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars."

A comparison of the act of 1897 with that of the act under question will, we think, disclose a greater difference than existed between the law of Missouri held by the Supreme Court of the United States to be invalid in Railroad *vs.* Husen, 95 U. S., 465, and the law of

Kansas, the validity of which was sustained by the same court in Missouri, K. & F. R'y Co. *vs.* Haber, 18 Supreme Court Rep., 488.

The statute under consideration in the case of State *vs.* Duckworth, *supra*, prohibited the introduction into this State in any manner or form, or the transportation through the State in any way or by any means, of any sheep until same had been inspected by a sheep inspector of Idaho, which inspection must be made 20 miles beyond the State line of Idaho, and all sheep must be dipped at least once, and, if found infected, twice before they were allowed to enter the State, and all this to be done by a sheep inspector of Idaho, twenty miles beyond the line of the State. The law of 1899 was intended as a quarantine law. It does not exclude all sheep, but only such as from the fact of their coming from an infected district are liable to import disease. The statute of 1899, under which appel-
30 lant was convicted, is simply a quarantine law, nothing more, nothing less. We do not understand that it is, or ever was, an essential to the enforcement of a quarantine that the fact of the existence of the disease in the subject of the quarantine should be primarily established. As we understand, it is a preventive measure. It will hardly be claimed, we apprehend, that the State has not the power to prevent, by legislative enactment, the introduction within its boundaries of diseased animals, and this is all that the act under consideration purports or is intended to accomplish.

The chief of the Bureau of Animal Industry, in his report to the Secretary of Agriculture dated March 15, 1898, says: "In the United States some sections have been overrun with sheep scab, and many persons engaged in the sheep industry have been forced to forsake it because of their losses from this disease. It is probable that in its destruction of invested capital sheep scab is second only to hog cholera among our animal diseases. The large flocks of the Plains and Rocky Mountain region and the feeding stations further east have suffered severely, and are constantly sending diseased animals to the great stock yards of this country." The same officer states in his letter transmitting his report to the Secretary of Agriculture: "The disease known as scab is one of the most serious drawbacks to the sheep industry, and results in enormous financial losses. Yet despite its insidious nature, its ease of transmission, its severe effects, and its prevalence in certain localities, it is a disease which yields readily to proper treatment." That the length of time of quarantine fixed by the Idaho statute is not excessive is, we think, shown by the rules laid down by the authority already
31 cited: "(1.) Scabby sheep should never be driven upon a public road. (2.) Sheds in which scabby sheep have been kept should be thoroughly cleaned, disinfected, and aired, and should be left unused for at least four weeks, better two months, before clean sheep are placed in them. (3.) Fields in which scabby sheep have been kept should stand vacant at least four weeks (better six or eight) before being used for clean sheep. (4.) A drenching rain will frequently serve to disinfect a pasture, but it is well to whitewash the posts against which scabby sheep have rubbed.

Even after observing the precautions here given it is not possible to absolutely guarantee that there will be no re-infection, but the probabilities are against it."

Report of chief of Bureau of Animal Industry, 1898, with this author-ative statement before them, the legislature of Idaho enacted the law under consideration. That under the conditions established and recognized some legislation was necessary for the effective prevention of the spread of this disease among the sheep of this State must be conceded, and we are clearly of the opinion that that adopted by the legislature was the most effective and the least objectionable that could have been adopted.

Counsel for appellant speaks somewhat contemptuously of these reports of the Bureau of Animal Industry to the Secretary of Agriculture of the United States, but we notice they are cited as authority by the Supreme Court of the United States in Kimmish *v.* Bail, 9 Supreme Court Reports, 277. The Supreme Court in the last-mentioned case, in drawing the distinction between it and the case of Railroad Co. *vs.* Husen, 95 U. S., 465, says: "The decision in that case (Railroad Co. *v.* Husen) rested upon the ground that no discrimination was made by the law of Missouri in the transportation forbidden between sound cattle and diseased, and this circumstance is prominently put forth in the opinion."

32 The same distinction appears between the Idaho law of 1895 and 1897 and the law of 1899. The law of 1895 and 1897 prohibited the bringing into the State of any sheep until the same had been inspected and treated by an Idaho sheep inspector twenty miles beyond the State line. The law of 1899 and the proclamation of the governor thereunder quarantines sheep coming from an infected district or locality before permitting them to be driven into this State.

Our legislature, in rightful recognition of the large and constantly increasing importance of the sheep industry as one of the most important elements of the wealth and resources of the State have enacted most stringent and comprehensive laws for the protection of those animals from disease. But what avails the enactment or the enforcement of laws for the protection of sheep within the State, if we are to be constantly subject to an invasion of sheep from the infected districts of adjoining States or counties, and we do not think that a law made simply and solely for the protection of the sheep of this State from infection by the introduction into the State of sheep from a known infected district can in any way be said to interfere with commerce between the States or abridge the rights of citizens of other States within this State. The law only required persons who desire to drive sheep into this State from known infected districts to be subject to the same rules and regulations for the prevention and cure of disease among their sheep so sought to be driven into this State as is required of our own citizens.

The Supreme Court of the United States in Missouri, K. & T. R'y Co. *v.* Haber, 18 Sup. Court Reporter, 488, which is, we believe, the

latest expression of that court upon this question, says:
33 "Neither corporations nor individuals are entitled, by force alone of the Constitution of the United States and without liability for injuries resulting therefrom to others, to bring into one State from another State cattle liable to import or capable of communicating disease to domestic cattle. The contrary cannot be affirmed under any sound interpretation of the Constitution. This court, while sustaining the power of the Congress to regulate commerce among the States, has steadily adhered to the principle that the States possess because they have never surrendered the power to protect the public health, the public morals, and the public safety by any legislation appropriate to that end which does not encroach upon rights guarantied by the National Constitution, nor come in conflict with the acts of Congress passed in pursuance of that instrument. Although the powers of a State must in their exercise give way to a power exerted by Congress under the Constitution, it has never been adjudged that that instrument, by its own force, gives any one the right to introduce into a State, against its will, cattle so affected with disease that their presence in the State will be dangerous to domestic cattle." We can see but little difference in principle between the case of Missouri, K. & T. R'y Co. *vs.* Haber and the case under consideration.

The Kansas statute under consideration in that case made any person or persons bringing into that State any cattle liable or capable of communicating Texas splenic or Spanish fever to any domestic cattle of that State liable for all damages that might be sustained by reason of the communication of said disease. "Proof that the cattle which such person or persons are charged with shipping, driving or keeping or which are claimed to have com-
34 municated the said disease were brought into this State from south of the thirty-seventh parallel of north latitude, shall be taken as *prima facie* evidence that such cattle were between the first day of February and the first day of December of the year in which the offense was committed, capable of communicating and liable to import Texas splenic or Spanish fever within the meaning of this act, and that the owner or owners, person or persons in charge of such cattle had full knowledge and notice thereof;" and this statute was upheld by the United States Supreme Court against a contention predicated upon the same lines contended for by the appellant in this case, to wit, the limit of the power of the State in the matter of public regulations.

The contention of appellant that because it was not shown that any of the sheep driven by him into this State were diseased, or that he was not permitted, although ready to prove that none of said sheep were diseased, cannot be entertained. The appellant himself testified that he had the sheep in Box Elder county, Utah, which is designated in the proclamation of the governor as one of the infected districts, and against which quarantine had been declared for the period of twenty-five days. The fact that these sheep came directly from an infected district was sufficient to establish their capability and liability to communicate disease.

The authorities upon the disease known as "sheep scab" say that it may be communicated by contact of one sheep with another or indirectly from tags of wool or from fences, posts, etc., against which scabby sheep have rubbed, or from the places where the sheep have been "bedded down." See report of chief of Bureau of Animal Industry, 1898. What protection, then, have the sheep-growers of Idaho without the aid of just such preventive laws as that under consideration?

35 We have examined and considered the various assignments of error set out in appellant's brief, and we do not think that any of them present reversible error. Appellant claims that the venue is not properly laid. We do not think this contention can obtain. The bringing into any county of the State sheep from the proscribed districts is an offence, and prosecution therefor may be instituted in any county where the sheep are found. We do not think the act delegates to the governor legislative power. It simply requires him to act when he ascertains that certain conditions exist. This is not a delegation of legislative power, as we understand it. Having ascertained, through entirely proper and legitimate methods, the existence of the exigency which under the law required him to act, he did so. He could not have done otherwise without being obnoxious to the charge of dereliction in official duty. The claim that the law discriminates against the citizens of Utah is entirely unsupported. We think most, if not all, of the other questions raised in the assignment of errors have been disposed of in this opinion. The judgment of the district court is affirmed, with costs to respondent.

Quarles, J., and Sullivan, J., concur.

36 STATE OF IDAHO, *ss:*

Supreme Court.

BOISE, IDAHO, *Oct.* 13, 1899.

Court met pursuant to adjournment—present, Hon. Joseph W. Huston, chief justice; Hon. Ralph P. Quarles, justice, and the officers of the court—when the following (among other) proceedings were had, to wit:

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant. } No. 577.

Ordered that the attorney general be, and he is hereby, granted until the first day of the November, 1899, term within which to serve and file a brief in the above-entitled cause.

STATE OF IDAHO, *ss:*

Supreme Court.

BOISE, IDAHO, *Dec.* 5, 1899.

Court met pursuant to adjournment—present, Hon. Joseph W. Huston, chief justice; Hon. Ralph P. Quarles, justice; Hon. Isaac

N. Sullivan, justice, and the officers of the court—when the following (among other) prodeedings were had, to wit:

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant. } No. 577.

It is ordered that this cause be, and the same hereby is, continued for the term.

37 Same Title of Court and Cause.

JAN. 10, 1900.

This cause having been heretofore set for hearing on this day, the same was called. Arthur Brown appeared for appellant and Attorney General S. H. Hays for the State. After argument by respective counsel, the court ordered the cause taken under advisement.

Same Title of Court and Cause.

JANUARY 24, 1900.

This cause having been heretofore submitted and taken under advisement by the court, and the court having fully considered the same, now, on this day, the cause was again called, and the decision of the court is delivered by Chief Justice Huston, to the effect that the judgment of the court below be affirmed.

It is therefore considered, adjudged, and decreed by the court that the judgment of the district court of the fifth judicial district in and for the county of Oneida in the above-entitled cause be, and the same hereby is, affirmed.

Costs awarded to the respondent.

38 In the Supreme Court of the State of Idaho.

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant. } Petition for Writ of Error.

Now come the said defendant and says that in the final judgment rendered by the supreme court of the State of Idaho on the twenty-fourth day of January, 1900, and in the proceedings had thereto certain errors were committed, to the prejudice of said defendant, which will more in detail appear from the assignments of error to be filed as a part of this petition; and petitioner further shows that in the final judgment and decree of the fifth judicial district court of the State of Idaho in and for Oneida county and in the final judgment of the supreme court of the State of Idaho a decision was had and made in said cause where was drawn in question the validity of a statute of the State of Idaho on the ground of its being repugnant to the Constitution of the United States, to wit: It was repugnant to section 8, article 1, of the Constitution of the United States, and repugnant to section 2, article 4, of the Constitution of the United States; that the defendant in this cause was arrested, tried, and con-

victed in the said district court of the fifth judicial district of Idaho of an alleged offence, stated in the indictment, for driving sheep from the county of Box Elder, State of Utah, into the county of Oneida, State of Idaho, between the 12th day of April, 1899, and the 20th day of April, 1899, against and in violation of a proclamation of the governor of the State of Idaho issued and published on the 12th day of April, 1899; that on the trial of said cause it was
39 claimed that the said defendant had violated a statute of Idaho, which reads as follows:

"Whenever the governor of the State of Idaho has reason to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other State or Territory, or that conditions exist that render sheep likely to convey disease, he must thereupon by proclamation, designate such localities and prohibit the importation from them of any sheep into the State, except under such restrictions as, after consultation with the State sheep inspector, he may deem proper," and of a proclamation issued thereunder, a copy of which is hereto annexed and made a part hereof. Your petitioner further shows that on the trial of said cause your petitioner, by his counsel, set up and claimed that the said act of the legislature of Idaho and the said proclamation of the governor of Idaho were repugnant to the Constitution of the United States, in that they were repugnant to the clauses above named, to wit, section 8, article 2, of the Constitution of the United States, and section 2, article 4, of the Constitution of the United States, and the validity of the said acts *were* drawn in question during said trial; that such proceedings were had after the conviction of the said defendant that the said cause was appealed to the supreme court of the State of Idaho, and in the supreme court of Idaho the validity of the said acts of the legislature and the governor *were* drawn in question as being contrary to the Constitution of the United States in the sections named; that upon the trial of said cause in the district court the trial court held that the said acts of the legislature and the governor were valid and not contrary to the Constitution of the United States, and the supreme court of the State of Idaho held upon the appeal thereto from the said conviction that the said acts of the legislature and the governor were valid and held in favor of their validity.

40 Wherefore this defendant prays that a writ of error may be issued in his behalf from the supreme court of the State of Idaho for the correction of the errors so complained of, and that the transcript, papers, and records in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

ARTHUR BROWN,
HENRY P. HENDERSON,
Attorneys for Defendant.

41 *Proclamation Scheduling Certain Localities on Account of Scab or Scabbies.*

STATE OF IDAHO,
EXECUTIVE OFFICE.

Whereas I have received statements from reliable wool-growers and stock-raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease known as scab or scabbies is epidemic among the sheep in certain localities or districts, viz., in the county — Cache, State of Utah; the county of Box Elder, State of Utah, and the county of Elko, in the State of Nevada and whereas it is known that sheep from said districts are annually moved, driven, or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster:

Now, therefore, I, Frank Steunenberg, governor of the State of Idaho, by virtue of authority in me vested and after due consultation with the State sheep inspector, do hereby prohibit the importation, driving, or moving into the State of Idaho of all sheep now being held, herded, or ranged within the said infected district, viz., the county of Cache, in the State of Utah; the county of Box Elder, in the State of Utah, and the county of Elko, in the State of Nevada, or which may hereafter be held, herded, or ranged within said infected districts for a period of 60 days from and after the date of this proclamation; after the termination of said 60 days sheep can be moved into this State only upon compliance with all the laws of the State of Idaho regarding the inspection and dipping of sheep.

In witness whereof I have hereunto set my hand and cause to be affixed the great seal of the State.

Done at Boisé, the capital, this 12th day of April, in the
42 year of our Lord, one thousand eight hundred and ninety-nine.

[SEAL.] FRANK STEUNENBERG.

By the governor:
M. PATRIE,
Secretary of State.

Filed February 16th, 1900.

SOL. HASBROUCK, *Clerk.*

43 In the Supreme Court of the United States.

R. RASMUSSEN, Plaintiff in Error,
vs.
THE STATE OF IDAHO, Defendant in Error. } Assignment of Errors.

Now comes the above-named plaintiff in error, by Arthur Brown and Henry P. Henderson, his attorneys, and says that in the record

and proceedings in the above-entitled cause there is manifest error, in this, to wit:

1. That the supreme court of the State of Idaho erred in sustaining the validity of the act of the legislature of the State of Idaho, Session Laws 1899, page 452, as fully set forth in the record and briefs in this cause.

2. The supreme court of the State of Idaho erred in sustaining the validity and power of the proclamation of the governor excluding certain sheep from the State of Idaho on the ground of scabbies.

3. The supreme court of the State of Idaho erred in holding that the act of the legislature of the State of Idaho, Session Laws 1899, page 452, and the proclamation of the governor thereunder *was* not in violation of section 8, article 1, of the Constitution of the United States.

4. The supreme court of the State of Idaho erred in holding that the act of the legislature, Session Laws 1899, page 452, and the proclamation thereunder *was* not in violation of section 2, article 4, of the Constitution of the United States.

5. The supreme court of Idaho erred in sustaining the trial court in each of the following particulars in which the trial court erred, and the plaintiff in error herein assigns as error each of the following assignments made in the supreme court of the State of Idaho to the ruling of the *the* trial court.

The court erred:

44 1st. In denying the motion to quash.

2d. In overruling the demurrer.

3d. In admitting in evidence the document called "Proclamation of the governor," and overruling the objection of counsel for the defendant thereto.

4th. In sustaining the objection of counsel for the prosecution to question to defendant: "Did your sheep have scab or scabbies?"

5th. In sustaining objection to question to defendant: "Did they (the sheep) have any indication of any disease?"

6th. In sustaining objection to question to defendant: "Did you know of this proclamation that has been offered in evidence at the time you drove into Oneida county?"

7th. In sustaining question to defendant: "Had you ever heard or been informed anything about it (the proclamation)?"

8th. In overruling defendant's motion for nonsuit.

9th. In overruling a direction to the jury to find for defendant upon the reasons named in the motion for nonsuit.

10th. In refusing to charge as request No. 1.

11th. In charging the jury in paragraph No. 1, viz., reading the so-called statutes of Idaho as the law in the case.

12th. In charging the jury that if defendant drove into Oneida county bands of sheep, being driven from the prohibited section embodied in the governor's proclamation, then the defendant is guilty. (Paragraph 2.)

13th. In charging that the governor had the right to issue the proclamation read in evidence. (Paragraph 3.)

14th. In charging that if the defendant violated the proclamation he also violated the provisions of law. (Paragraph 4.)

ARTHUR BROWN,
HENRY P. HENDERSON,
Attorneys for Pl'ff in Error.

Filed Feb. 16th, 1900.
SOL. HASBROUCK, *Clerk.*

45 In the Supreme Court of the State of Idaho.

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant.
} Allowance of Writ of Error.

On the twelfth day of February, 1900, came the said defendant, by his attorney, Arthur Brown, and filed and presented herein a petition praying for the allowance of a writ of error intended to be urged by the defendant, praying also that the transcript of the records and proceedings and papers upon which the judgment herein was rendered and duly authenticated may be sent to the Supreme Court of the United States, and that such full and further proceedings may be had as may be proper in the premises.

In consideration thereof I, Joseph W. Huston, chief justice of the supreme court of the State of Idaho, do hereby allow the writ of error upon the defendant's giving bond according to law in the sum of five hundred dollars, which shall operate as a supersedeas bond, and bail, pending proceedings on writ of error to the Supreme Court of the United States.

JOSEPH W. HUSTON,
Chief Justice.

Filed Feb. 16, 1900.
SOL. HASBROUCK, *Clerk.*

46 In the Supreme Court of the United States.

R. RASMUSSEN, Plaintiff in Error,
vs.
THE STATE OF IDAHO, Defendant in Error.
} Citation.

The United States of America to the State of Idaho, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, within thirty days from the date of this citation, pursuant to the writ of error filed in the clerk's office of the supreme court of the State of Idaho, at Boise, Idaho, wherein R. Rasmussen is plaintiff in error and The State of Idaho is defendant in error, to show cause, if any there be, why a judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

said Supreme Court of the United States, this 12th day of February, in the year of our Lord one thousand nine hundred.

JOSEPH W. HUSTON,
Chief Justice Supreme Court of Idaho.

Attest: —— ——.

Due service of the foregoing citation by copy personally served and of annexed petition in error, allowance and assignment in error is hereby admitted this 16th day of February, 1900.

SAMUEL H. HAYS,
Att'y Gen'l.

Filed Feb. 16th, 1900.
SOL. HASBROUCK, *Clerk.*

47 In the Supreme Court of the State of Idaho.

THE STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant.

Know all men by these presents that we, R. Rasmussen, as principal, and the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, duly authorized by its charter to become sole surety upon bonds as surety, are held and firmly bound unto the State of Idaho in the full and just sum of five hundred ($500.00) dollars, to be paid to the said State of Idaho, its certain attorneys and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated this 14th day of February, A. D. 1900.

Whereas lately, in the supreme court of the State of Idaho, in a suit pending in the said court between said defendant, R. Rasmussen, and The State of Idaho, plaintiff, a judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment of the aforesaid suit, and a citation directed to the said State of Idaho, citing and admonishing it to be and appear in the Supreme Court of the United States, to be holden at Washington, in the District of Columbia:

Now, the condition of the above obligation is such that if
48 the — R. Rasmussen shall prosecute said writ of error to effect, and, if he fails to make said plea good, answer all costs, and will appear in the district court of the fifth district of the State of Idaho in and for the county of Oneida, and will at all times render himself amenable to its orders and process and appear for judgment and surrender himself in execution thereof, then the above obligation to be void; else to remain in full force and virtue.

In witness whereof the said R. Rasmussen has subscribed his name and the Fidelity and Deposit Company of Maryland has

caused this bond to be executed in its corporate name, attested with its corporate seal, by its local director, pursuant to a resolution of the board of directors of the Fidelity and Deposit Company of Maryland duly passed and adopted Apr. 5th, 1899.

R. RASMUSSEN,
By ARTHUR BROWN, *Att'y.*

Witness:

——— ———.

[CORPORATE SEAL.] FIDELITY & DEPOSIT CO. OF MD.,
By M. S. PENDERGAST,
Member Local Board of Directors.

Attest: R. B. WHITTEMORE, *Gen'l Ag't.*

STATE OF UTAH, }
County of Salt Lake, } *ss:*

M. S. Pendergast, being first duly sworn, deposes and says:
I am a member of the local board of directors of the Fidelity and Deposit Company of Maryland, the surety on the foregoing bond; that said surety company is a corporation organized under the laws of the State of Maryland, and said corporation has a paid-up capital stock of $1,500,000 and a surplus fund of $1,500,000.

M. S. PENDERGAST.

Subscribed and sworn to before me this 14th day of Feb., A. D. 1900.

[SEAL.] R. B. WHITTEMORE,
Notary Public.

49 In the Supreme Court of the State of Idaho.

THE STATE OF IDAHO, Respondent, }
vs.
R. RASMUSSEN, Appellant. }

On reading the foregoing bond executed in behalf of the said defendant, as principal, and by the Fidelity and Deposit Company of Maryland, as surety, the same is hereby accepted as sufficient bond on appeal and the same is approved by me and is accepted as a recognizance and bail for the said defendant during the hearing of said cause in the supreme court.

JO. WALDO HUSTON,
Chief Justice Sup. Ct. of Idaho.

50 In the Supreme Court of the State of Idaho.

THE STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant.

STATE OF IDAHO, }
County of Ada, } *ss:*

Sherman G. King, being duly sworn, says: I am the agent of the Fidelity and Deposit Company of Maryland, organized for the purpose of becoming surety in proper cases; that said company has filed due proof with the secretary of state of the State of Idaho that it possesses the qualifications under the act of the legislature, Laws of 1899, page 337, providing for companies being sureties on recognizances and bonds, and has received a certificate from the said secretary of state setting forth that said company has qualified and is authorized to do business under said act; that said proof was filed less than one year ago and *and* said certificate is in full force and effect.

SHERMAN G. KING.

Subscribed and sworn to before me this 19 day of February, 1900.

[SEAL.] WALTER S. WALKER,
Notary Public.

Filed Feb. 19th, 1900.
SOL. HASBROUCK, *Clerk.*

51 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Idaho, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a suit which is in the said supreme court of the State of Idaho, before you, being the highest court of law or equity of said State in which a decision could be had in said State between The State of Idaho, plaintiff, and R. Rasmussen, defendant, wherein was drawn in question the validity of an act of the legislature of the State of Idaho and of the governor thereof, to wit, the validity of the statute of the State of Idaho of Session Laws 1899, page 452, and the proclamation issued in pursuance thereof on the 12th day of April, 1899, and whereas the decision was in favor of the validity of said act of the legislature, and manifest error has happened, to the great injury and damage of the said defendant, R. Rasmussen, as by the petition for writ appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then and under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at

Washington within sixty days of the date hereof, and that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 15th day of February, A. D. 1900.

[Seal United States Circuit Court, Idaho.]

A. L. RICHARDSON,
Clerk United States Circuit Court
of North Circuit, District of Idaho.

Allowed by—
JOSEPH W. HUSTON,
Chief Justice of the State of Idaho.

52 In the Supreme Court of the United States.

R. RASMUSSEN, Plaintiff in Error,
vs.
THE STATE OF IDAHO, Defendant in Error.

UNITED STATES OF AMERICA,
State of Idaho, } *ss:*

I, Sol. Hasbrouck, clerk of the supreme court of the State of Idaho, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing 53 pages, numbered from 1 to 53, inclusive, contain a full, true, and complete transcript of the record and proceedings had in said court in the case of R. Rasmussen, plaintiff in error, against The State of Idaho, defendant in error, as the same remain of record and on file in said cause. I further certify that at the time the said writ of error was filed in the office of the clerk of said court the plaintiff in error lodged with me, as clerk of said supreme court, in said office, a copy of said writ of error.

Witness my hand and the seal of said supreme court this 20 day of February, A. D. 1900.

[Seal of Supreme Court, State of Idaho.]

SOL. HASBROUCK, *Clerk.*

Endorsed on cover: File No., 17,658. Idaho supreme court. Term No., 544. R. Rasmussen, plaintiff in error, *vs.* The State of Idaho. Filed February 28th, 1900.